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**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF NEW YORK**  
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**IN RE: EPHEDRA PRODUCTS LIABILITY LITIGATION**

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**PERTAINS TO *Sonja Lambert, et al. v. Rexall Sundown, Inc., et al.*, 07 CV 03789 (JSR)**

**MEMORANDUM OF LAW IN SUPPORT OF UNOPPOSED MOTION OF PLAINTIFFS  
 TO DISMISS CLAIM OF DAVID LAMBERT WITH PREJUDICE**

In their Complaint, Plaintiffs David and Sonja Lambert allege they suffered injuries and damages allegedly due to Plaintiff Sonja Lambert's ingestion of an ephedrine-containing dietary supplement that Plaintiffs allege to have been manufactured and distributed by Defendants RS OLDCO, Inc. (f/k/a Rexall Sundown, Inc.); RL OLDCO, Inc. (f/k/a Richardson Labs, Inc.); and Nutrition USA, Inc. (f/k/a Numico Assumption Company). Plaintiffs' Complaint includes a claim for loss of consortium on behalf of David Lambert.

At all times pertinent to this suit, Mr. Lambert has been a resident of Virginia, and has a last known residence at 871 Peat Mt. Road, Harrisonburg, Virginia 22802. (*See generally* Affirmation of David Rosenblum "Rosenblum Aff." attached as Exhibit A.) David Lambert is now divorced from the Plaintiff Sonja Lambert by Decree of Divorce entered June 15, 2007, in the Prince William Circuit Court, Virginia. (*See Rosenblum Aff.*, ¶ 4.) Upon information and belief, Mr. Lambert has remarried. (*See Rosenblum Aff.*, ¶ 4.)

This lawsuit originally was filed in Palm Beach County, Florida, Docket Number CA 02-10321AF. On December 9, 2005, the Virginia court dismissed the lawsuit pursuant to Florida Rule 1.061(a) and the doctrine of forum *non conveniens* without prejudice to its re-filing in Virginia. Plaintiffs re-filed in Virginia (Prince William Circuit Court, Docket Number CL-

68976) on April 6, 2006, and Defendants RS OLDCO, Inc. (f/k/a Rexall Sundown, Inc.); RL OLDCO, Inc. (f/k/a Richardson Labs, Inc.); and Nutrition USA, Inc. (f/k/a Numico Assumption Company) removed the case to the United States District Court for The Eastern District of Virginia and thereafter the case was transferred to the MDL proceedings of this Court.

Under the applicable Virginia law, an action for loss of consortium is derivative of the spouse's action for personal injuries, and both are governed by the law of the place where the personal injuries were suffered. *Pringle v. Sloan*, 4 Cir. L952272, 44 Va. Cir. 516, 517 (1996). As Plaintiff Sonja Lambert suffered injuries in Virginia, the conflicts law of Virginia would therefore look to Virginia tort law to determine such claim for loss of consortium. In Virginia, a spouse's common-law right of action for loss of consortium has been abrogated by statute. Va. Code Ann. § 55-36; *Pringle*, 44 Va. Cir. at 516-17. § 55-36 states:

Contracts of, and suits by and against, married women. —\* \* \* In an action by a married woman to recover for a personal injury inflicted on her she may recover the entire damage sustained including the personal injury and expenses arising out of the injury, whether chargeable to her or her husband, notwithstanding the husband may be entitled to the benefit of her services about domestic affairs and consortium, \* \* \* ; and no action for such injury, expenses or loss of services or consortium shall be maintained by the husband. (Code 1919, § 5134; 1932, p. 21; 1950, p. 460.)

Moreover, because of the couple's divorce and remarriage, Plaintiff David Lambert no longer has a legal basis to assert a claim for loss of consortium.

Plaintiffs' counsel conveyed this legal information and analysis to Mr. Lambert, both in writings and in at least one direct telephone conversation with him. (*See Rosenblum Aff.*, ¶¶ 7 & 9.) Counsel for David Lambert has been unable to obtain a signed affirmation of a Stipulation of Dismissal of David Lambert, despite multiple attempts.

Plaintiffs' counsel sent to Mr. Lambert – via Federal Express overnight delivery – legal

information and analysis stating that Mr. Lambert has no viable legal claim and that he should properly be dismissed as a Plaintiff on February 14, 2008; February 19, 2008; March 3, 2008; April 2, 2008; and April 8, 2008. (*See Rosenblum Aff.*, ¶¶ 8, 11, & 12, Exhibits 1 through 5). Daily voice messages were left on Mr. Lambert's cell phone by Plaintiffs' counsel and at least on one occasion, Plaintiffs' counsel spoke directly to Mr. Lambert and advised him of the circumstances of his claim and its pending dismissal. (*See Rosenblum Aff.*, ¶ 9.) Despite these attempts at contact, Mr. Lambert has refused to sign a Stipulation of Dismissal of his claim or cooperate with his attorney. (*See Rosenblum Aff.*, ¶17.)

A recent internet search revealed that a possible new address for Mr. Lambert at 841 Mt. Peat Road, Harrisonburg, Virginia. (*See Rosenblum Aff.*, ¶ 14.) This residence is listed as the residence of a Michael Kirby. (*See id.*) On April 11, 2008, a woman answered the telephone number for the Mt. Peat Road address. (*See id.*) The woman stated that the April 2, 2008, Federal Express delivery had indeed been received and given to David Lambert. (*See id.*) The woman gave Plaintiffs' counsel a different cell phone number by which to reach Mr. Lambert. On April 11, 2008, counsel for Plaintiffs placed a call to that number. (*See Rosenblum Aff.*, ¶ 15.) A woman, identifying herself as the wife, answered the phone. (*See id.*) Plaintiffs' counsel asked to leave his name and number for Mr. Lambert, but the woman replied "It doesn't matter; he's not signing any papers" and hung-up abruptly. (*See id.*)

Service of this Motion, Memorandum and Support and Notice of Hearing is being attempted at David Lambert's last known address via Federal Express overnight delivery. There have been no other efforts to reach David Lambert, and he has not attempted to reach any of the attorneys of record.

For the foregoing reasons, Plaintiffs Sonja Lambert and David Lambert respectfully

request that the Court grant the motion of dismissal of David Lambert's consortium and or other claims with prejudice. By way of signature below, Defendants RS OLDCO, Inc. (f/k/a Rexall Sundown, Inc.); RL OLDCO, Inc. (f/k/a Richardson Labs, Inc.); and Nutrition USA, Inc. (f/k/a Numico Assumption Company) agree with this motion and do not oppose it. For the Court's convenience, a proposed Order of Dismissal with Prejudice of Plaintiff David Lambert (only) is attached as Exhibit B.

Respectfully submitted,

/s/ David Rosenblum

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**Attorneys for Defendants RS OLDCO, Inc. (f/k/a Rexall Sundown, Inc.), RL OLDCO, Inc. (f/k/a Richardson Labs, Inc.), and Nutrition USA, Inc.**

(f/k/a Numico Assumption Co.)

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing has been served, via ordinary U.S. Mail, via the Court's ECF/EM system and/or via facsimile this 29th day of April, 2008, upon the following:

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Sundown, Inc.), RL OLDCO,  
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Inc.), and Nutrition USA, Inc.  
(f/k/a Numico Assumption Co.)**

I hereby certify that a true and accurate copy of the foregoing has been served, via Federal Express overnight delivery this 29th day of April, 2008, upon the following:

**David Lambert  
871 Peat Mt. Rd.  
Harrisonburg, VA 22802**

/s/ David Rosenblum  
David Rosenblum

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